DRILEX SYSTEMS PTE. LTD.

v.

REGISTRAR OF COMPANIES & ANOR.

HIGH COURT, SINGAPORE
CHAN SEK KEONG J
[ORIGINATING MOTION NO. 78 OF 1989]
12 NOVEMBER 1990

COMPANY LAW: *Registrar of Companies - Power to allow foreign company to register a name similar to a Singapore company - Misleading, confusion - Nature of business of both parties - Balance of convenience - Discretion of Registrar - Sections 27, 368, 369, 378 Companies Act [Sing].*

The plaintiff, P, is appealing under s. 12(6) of the Companies Act (the Act) against the decision of the Registrar of Companies (ROC) which allowed a foreign company, the second defendant, D2, to change and register their corporate name in Singapore for an existing branch G. However, during the hearing, it was discovered that the branch that was registered had ceased to exist when the parent company was dissolved in 1981. Notwithstanding the issue of D2's *locus standi* to defend the ROC's decision, the parties agreed that D2 could still defend the principle of the ROC's decision, that is, that it was not undesirable that D2 be allowed to use their corporate name for the purpose of carrying on business in Singapore.

The issues between the parties are:

(a) whether the names of P and D2 are identical and/or so resemble each other that that of D2 is likely to be mistaken for that of P;

(b) whether P's business was affected by D2;

(c) whether P has suffered or is likely to suffer any damage, in terms of its business, by reason of the confusion of names.

The Deputy ROC based her decision on the different nature of industries of both parties and the fact that the companies could be distinguished from the use of the word "Inc"

P attacked the decision of the ROC firstly in relation to the nature and extent of her powers under s. 378 of the Act and secondly the validity of the reasons given by her.

Held:

[1] Reading ss. 368, 369 and 378 of the Act together, it would appear that parliament has created a business environment in Singapore in which all foreign companies are entitled to registration under this division for the purpose of carrying on business in Singapore, subject only to prohibitions in s. 369 and the restrictions as to the use of their names in s. 378. The power, or the duty, of the Registrar under s. 378 is not affected or diminished in any way by s. 27(12). The expression "company" in s. 27(1) has the meaning as statutorily defined and the contrary intention does not appear therein.

[2] The inconvenience to P was limited to receiving misdirected communications and copying them for the purpose of proving confusion. It would thus appear that but for the initial inconvenience of receiving misdirected messages, P has suffered no other inconvenience except that which was necessarily caused by its own needs to preserve the evidence of confusion.

[3] (a) However, the evidence adduced by the D2 shows that they had an earlier connection with the word "Drilex"; than the plaintiffs as one of the English subsidiaries owns the trade mark "Drilex" which was first registered in France in 1974. Thus, there is no question of the D2 copying the name of P in order to benefit from any goodwill of D2 that may be associated with that word.

(b) The second reason of the Registrar that the two companies are carrying on different businesses is supported by the evidence. On the evidence there is no likelihood of any business of the plaintiffs being diverted to D2.

(c) The third reason, that the presence of "Inc" in the D2's name is sufficient to distinguish it from that of P's is disproved by the ample evidence of confusion in the identities of the P and the D2 brought about by the two names.

(d) The fourth reason, that it is undesirable that D2, being a foreign company, should be required to change their name as it would create confusion for themselves and/or their creditors, is partially justified, for the reasons given earlier in connection with the operation of multi-national companies. What the Registrar presumably means is that it is more inconvenient for the D2 to change their name just for the sake of doing business in or from Singapore than for P to be at the receiving end of mis-directed communications. It is really a question of the relative inconvenience to the parties concerned.

[4] As registration of a name under the Companies Act is not concerned with the creation of a proprietary interest in a name, there is, of course, nothing to prevent P from establishing that they have such a proprietary interest. In the present proceedings, P is not concerned with establishing and do not have to establish the existence of such a proprietary interest as their case is based on their rights derived from the earlier registration of their corporate name. The dismissal of this appeal does not prevent them from pursuing any common law rights they may have in their name as a trade name against D2.

[5] In any case, where a foreign company, particularly a multi-national company, decides to change its name, the decision to do so is normally prompted by its business needs as a whole and is not primarily dictated by the needs of one of its many branches in the many countries in which it carries on business. The test applied by Ongley J in the *Abacus* case must take these considerations into account in the case of foreign companies under a legal regime which gives priority to the location of multi-national companies in its territory.

[Appeal dismissed.]

Cases referred to:
Computervision Corporation v. Computer Vision Limited [1975] RPC 171
South Pacific Airlines of New Zealand Ltd. v. Registrar of Companies [1964] NZLR 1
Abacus Finance Ltd. v. Registrar of Companies [1985] 2 NZLR 607

Legislation referred to:
Companies Act [Sing], ss. 12(6), 27(1), 368, 369, 378,
Companies Act 1955 [NZ], ss. 31, 32

For the plaintiffs - Tang Khin Wai
For the registrar of companies - Ng Yuen
For the 2nd defendants - Harish Kumar

JUDGMENT

Chan Sek Keong J:

This is an appeal by the plaintiffs under s. 12(6) of the Companies Act against the decision of the Registrar of Companies, the 1st defendant to allow a foreign company, Drilex Systems Inc, the 2nd defendants herein, to change and register their corporate name in Singapore for an existing branch which was then called Grant Tool Oil Company. The plaintiffs are a company incorporated under the Act on 3 October 1979. The 2nd defendants adopted their current corporate name following a merger on 5 June 1987 under their respective laws of incorporation of 3 existing corporations. The other relevant facts in connection with the dispute between the parties are set out in my judgment, reported in [1990] 1 MLJ 199, where I held that the plaintiffs were an aggrieved person with respect to the decision of the Registrar for the purpose of s. 12(6) of the Act.

In the course of the hearing before me, an unusual development occurred. The Registrar had originally accepted the 2nd defendants' application to change the name of their Singapore branch to conform with their new name. During the adjournment of the hearing, the 2nd defendants discovered that the branch that was registered under Part IX Division II of the Act had ceased to exist when the parent company was dissolved in 1981 under the law of its incorporation, and therefore was not a branch of one of the 3 merged companies as the 2nd defendants had assumed all along. In this event, the 2nd defendants were and are, technically, not registered in Singapore as a foreign company, and the question then arose as to their *locus standi* in this action to defend the actual decision of the Registrar which was also made on the basis of an existing branch. However, Counsel for all the parties have agreed that there was nothing to prevent the 2nd defendants, whose legal existence was not in doubt, from continuing to defend the principle of the Registrar's decision which, in essence, was that it was not undesirable that the 2nd defendants be allowed to use their corporate name for the purpose of carrying on business in Singapore. The substance of the plaintiffs' complaint was that the Registrar's decision was wrong in law, without regard to the actual situation prevailing as regards the existence of the branch that remained on the register. The fact that the said branch was no longer in existence was merely co-incidental to the issue. The Registrar has, through State Counsel, informed the Court that her decision still stands and that if her defence in this action were successful, she would proceed forthwith to register the 2nd defendants as a foreign company. That being the position, I move on to the substantive issues of fact and law that have been canvassed before me.

The first dispute between the parties is whether names of the plaintiffs and the 2nd defendants are identical and/or so resemble each other that that of the 2nd defendants is likely to be mistaken for that of the plaintiffs'. The plaintiffs say that that is the case on the evidence and their Counsel has referred me to the case of *Computervision Corporation v. Computer Vision Limited* [1975] RPC 171 to rebut the Registrar's attempt to argue that the use of the word "Inc" after the words "Drilex Systems" made the 2nd defendants' name distinguishable from that of the plaintiffs. Ironically, Counsel for the 2nd defendants have actually complained that Telecoms have confused and **continued to confuse the two entities in spite of its being reminded by the 2nd defendants that the two corporate entities were different**. This is conclusive evidence in support of the plaintiffs' complaint on the confusion of the identities of the plaintiffs and the 2nd defendants. I find as a fact that the two corporate names so resemble each other that one is likely to be mistaken for the other. I shall consider later the legal consequences, if any, of this finding.

The second dispute relates to the business of the plaintiffs. Paragraph 4 of the affidavit of Peter Low, the managing director of the plaintiffs, affirmed on 14 August 1989, stated as follows:

> 4. The plaintiffs commenced business as a supplier of radio communication and all equipment and machinery for the offshore oil and gas industries and also as purchasing agents for various oil companies and contractors servicing Pertamina of Indonesia. Sometime in 1982 because of the slump in the oil and gas industries, the plaintiffs' business slackened and the plaintiffs therefore have to diversify into the data communication business in selling computer paraphernalia and accessories. The plaintiffs still continue to maintain contacts with their buyers from the oil and gas industries and still continue to supply and service them although on a smaller scale. Some of the plaintiffs' business contacts in the oil and gas industries still request the plaintiffs for quotations from time to time. Annexed to this affidavit are true copies of some correspondence between the plaintiffs and their business contacts in the oil and gas industries.

The plaintiffs have produced some documentary evidence to show that in or after August 1988 they contacted the 2nd defendants for price quotations for a few parts of drilling equipment manufactured by the 2nd defendants. The price quotations given showed that these items were of insignificant value. Moreover, there is no evidence of any follow up orders for purchase by the plaintiffs. Having regard to the fact that the plaintiffs had, on 31 March 1988, complained about the 2nd defendants' use of the plaintiffs' name in Singapore and the absence of any consummated transactions by the plaintiffs on behalf of any of their customers for oil drilling equipment, I place no weight on the plaintiffs' assertion that they had provided or were continuing such services to the oil industry in Indonesia. I think that such evidence as there was before the Court showed that if any customer wanted to buy oil drilling equipment, whether or not the type manufactured by the 2nd defendants, they would not have approached the plaintiffs for procurement. The preponderance of evidence is that the plaintiffs carried on and continue to carry on the business of import and distribution of communication equipment, computer related products and accessories.

The third dispute is whether the plaintiffs have suffered or are likely to suffer any damage, in terms of their business, by reason of the confusion of names. The plaintiffs have in paras. 8 and 9 of Peter Low's affidavit alleged (i) that it was likely that communications intended for the plaintiffs had been sent by mistake to the 2nd defendants, and consequently either lost or delayed, thus causing prejudice to the plaintiffs' business, and (ii) that the plaintiffs would continue to be gravely prejudiced by the "fact" that their trade and business operations, activities and commercial secrets would unwittingly be made known to the 2nd defendants and their staff as a result of these communication mix-ups. These are the only two examples of damage given by the plaintiffs.

Having regard to the evidence, the allegations of damage have not been substantiated. The evidence showed that it was the 2nd defendants' communications which had been mistakenly despatched to the plaintiffs. There was no evidence from the plaintiffs that they had lost any communications or order as a result of their mistaken despatch to the 2nd defendants or that any of their customers had complained of lost or mis-directed communications. In any case, assuming there were such incidents, it is difficult to see how the plaintiffs' business would suffer in consequence since the 2nd defendants are not in the same business. The 2nd defendants are part of a transnational group of corporations, all of which are involved in one way or another in the oilfield drilling motor technology, and which own a considerable number of patents for such technology.

On the evidence, the plaintiff has only one complaint, and that is that the plaintiffs received regularly "voluminous" mail, telexes and faxes regularly meant for the 2nd defendants but which were wrongly sent to the plaintiffs and that they would continue to be so inconvenienced if the 2nd defendants were allowed to register themselves as a foreign company. No affidavit has been filed since the last adjournment to show whether this inconvenience is continuing.

The Deputy Registrar of Companies has filed an affidavit on 31 January 1990 giving her reasons for her decision. They are set out in paras. 4 to 7 which read:

> 4 It was noted from the said Form 14B that the original Drilex Systems, Inc was registered in USA on 15 May 1979 whereas the plaintiffs, Drilex Systems Pte. Ltd. was registered in Singapore on 4 October 1979. It was also noted from the said Form 14B that the principal activities of Drilex Systems, Inc would be "to produce, lease and service oil and gas drilling tools and positive displacement down hole motors". On the other hand, the principal activities of the plaintiffs consist of importing and distribution of communication equipment, computer related products and accessories. The plaintiffs and the foreign company, Drilex Systems, Inc were obviously in different industries.
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> 5 The name "Drilex Systems, *Inc*" is distinguishable from "Drilex Systems Pte. Ltd." by the use of the word "Inc" and this would alert the business community of the difference and the nature of the entity they are dealing with.
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> 6 As a foreign company is a single legal entity whether operating in its country of origin or operating in Singapore, to require such a foreign company to use a name in Singapore other than its registered name in its country of origin would cause confusion and would thus be undesirable. For example, it would create problems in litigation - when such a foreign company is to be named as a party to the proceedings.
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> 7 Based on the reasons set out in paras. 4, 5 and 6 the name, Drilex Systems, Inc was not considered to be undesirable and was allowed for reservation. Pursuant thereto, Drilex Systems, Inc was registered.

Counsel for the plaintiffs has attacked the decision of the Registrar on two main grounds. The first concerns the nature and extent of her powers under s. 378 of the Act and the second the validity of the reasons given by her.

With respect to the first ground, Counsel has contended that the Registrar has no power to allow a foreign company to register a name which is identical with or so resembles that of a Singapore company that the name of the former is likely to be confused with that of the latter. He relies on s. 27 of the Act, the relevant parts of which are as follows:

> 27.(1) except with the consent of the minister, a company shall not be registered by a name that in the opinion of the Registrar:
>
> (a) is undesirable;
>
> (b) is identical to that of any other company, corporation or business name;
>
> (c) so nearly resembles the name of another company, corporation or business name as to be likely to be mistaken for it; or
>
> (d) is a name of a kind that the minister has directed the Registrar not to accept for registration.
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> (10) A person may apply in the prescribed form to the Registrar for the reservation of a name set out in the application as:

(a) the name of an intended company;

(b) the name to which a company proposes to change its name; or

(c) the name under which a foreign company proposes to be registered, either originally or on change of name.

(11) A company shall not be registered under s. 19(1) and the Registrar shall not approve the change of name of a company under s. 28(2) unless the name which it is proposed to be registered or the proposed new name, as the case may be, has been reserved under subsection (12).

(12) If the Registrar is satisfied as to the *bona fides* of the application and that the proposed name is a name by which the intended company, company or foreign company could be registered without contravention of subsection (1), he shall reserve the proposed name for a period of two months from the date of the lodging of the application.

(13) If, at any time during a period for which a name is reserved, application is made to the Registrar for an extension of that period and the Registrar is satisfied as to the *bona fides* of the application, he may extend that period for a further period of two months.

(14) During a period for which a name is reserved, no company or foreign company (other than the intended company, company or foreign company in respect of which the name is reserved) shall be registered under this Act, whether originally or on change of name, under the reserved name or under any other name that, in the opinion of the Registrar, so closely resembles the reserved name as to be likely to be mistaken for that name.

(15) The reservation of a name under this section in respect of an intended company, company or foreign company does not in itself entitle the intended company, company or foreign company to be registered by that name, either originally or on change of name.

Counsel has submitted that s. 27(1) (which appears in Part III Division 2 dealing with Singapore companies) applies also to foreign companies for the following reasons: (i) although the expression "company" is statutorily defined to mean a company incorporated under the Act, that definition must, as required by s. 4 itself, give way to a contrary intention. There is such a contrary intention as subsection (1) must be construed to include a foreign company because subsections (10), (12) to (15) are, in terms, applicable to foreign companies, and (ii) subsection (12) itself prohibits the Registrar from allowing the foreign company to reserve a name that contravenes subsection (1), and if the name cannot be reserved, it must follow that it cannot be registered.

State Counsel and Counsel for the 2nd defendants have contended otherwise. They have submitted that the legislature has created two "regimes" for the registration of corporate names in Singapore, one applicable specifically to Singapore companies which is governed by s. 27 and the other applicable to foreign companies which is governed by s. 378 and that under the latter section, the Registrar has a much wider discretion than that she has under the former section. State Counsel, however, concedes that s. 12(12) was inadvertently drafted to apply subsection (1) to reservations of name by foreign companies.

Having heard State Counsel and Counsel for the 2nd defendants, I agree with them on this issue. The powers of the Registrar with regard to the registration of foreign companies in Singapore are set out in three sections in Part IX Division II of the Act. Under s. 368 thereof, the Registrar "shall register the (foreign) company" provided that the documents listed in that section are lodged with the Registrar, subject to the provisions of the Act. Under s. 369, the Registrar:

> shall refuse to register a company under this division if (she) is satisfied that the foreign company is being used or is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore or is acting or likely to act against the national security or interest.

Section 378 provides that:

> Except with the consent of the minister, a foreign company shall not be registered by a name that, in the opinion of the Registrar, is undesirable or is a name, or a name of a kind, that the minister has directed the Registrar not to accept for registration.

Reading ss. 368, 369 and 378 together, it would appear that Parliament has created a business environment in Singapore in which all foreign companies are entitled to registration under this division for the purpose of carrying on business in Singapore, subject only to prohibitions in s. 369 and the restrictions as to the use of their names in s. 378. The power, or the duty, of the Registrar under s. 378 is not affected or diminished in any way by s. 27(12). I also agree that in s. 27(1), the expression "company" has the meaning as statutorily defined and that the contrary intention does not appear therein. In s. 27, where a subsection is intended to apply to a foreign company, that expression is specifically used, as in subsections (10) and (12) to (15). With regard to subsection (12), it is obviously a drafting mistake as it serves no purpose in preventing a foreign company from reserving a name which contravenes paras. (b) and (c) of s. 27(1) when the foreign company may still register such a name by virtue of ss. 369 and 378. If the reservation of names provision in s. 27 in respect of foreign companies had been placed in its proper context in Part IX Division II, this anomalous requirement would have become evident.

With respect to the second ground, Counsel for the plaintiffs relies strongly on two decisions from New Zealand. In *South Pacific Airlines of New Zealand Ltd. v. Registrar of Companies* [1964] NZLR 1, the applicants sought a writ of *mandamus* to compel the respondent to approve their new name, Airlines of New Zealand Ltd., under s. 32 of the Companies Act 1955 after the respondent had rejected their application. The respondent had refused the application on two grounds under s. 31 of the 1955 Act (which is *in pari materia* with s. 27 of Cap. 50): (1) it so resembled the name of the national airline, *New Zealand National Airways Corporation*, as to be calculated to deceive and (2) in the opinion of the Registrar, the suggested name was undesirable. The Court agreed that there was a distinct possibility of confusion in the adoption of the new name by the applicants, and that although the applicants had no intention to deceive, the similarity might cause deception of customers unfamiliar with the rival operation of air services. The Court further held that the new name was undesirable on the ground that it was likely to cause confusion. Counsel has relied on the following passage from the judgment of McGregor J (at p. 5):

> In my view this provision gives to the Registrar the widest discretion, and it would be "undesirable" to endeavour to define the limits of that discretion. What might be undesirable would include the prohibited words contained in subsection (2), but the area in my view would be much more extensively. Any name of an obscene nature, it is needless to say, would be undesirable and objectionable. Any name which might give offence to a friendly state would be undesirable. The expression "undesirable" would seem to embrace any name or names which would offend public policy or might give offence to any particular section of the community, or any particular religion. Each name must be considered by the Registrar in the light of its own merits or demerits, but it is clear that any name that might mislead the public or a recognized section of the public in any particular locality, or would be likely to cause confusion, is undesirable irrespective of the intentions or the motives or purposes of the applicant. If the Registrar has exercised his discretion by the application of a wrong principle, or by consideration of extraneous matters, the Court may review the exercise of the discretion. Here

> in my view the Registrar has not so erred, and the adoption of the proposed name might well cause confusion. It would seem to me not a matter of insuperable difficulty to select a name which would overcome the difficulties.

The second decision is *Abacus Finance Ltd. v. Registrar of Companies* [1985] 2 NZLR 607. In that case, there were two proceedings which were heard, by consent of the parties, at the same time as they concerned the same points of law. The first was an appeal by the applicants ("AFL") against the decision of the Registrar in not requiring another company, Abacus Holdings Ltd. ("ABL"), to change their name. The second was an action by the applicants for an injunction to restrain ABL from trading under that name. In 1983, s. 31 of the 1955 Act had been amended to provide that the Registrar might refuse to register any name which, in the opinion of the Registrar, was undesirable. As Ongley J said (at p. 609):

> Undesirability is now the sole criterion for the exercise of the Registrar's discretion whereas under the repealed section, in the absence of consent, it was also necessary to consider as separate factors, resemblances of name of another company calculated to deceive and, as well, the public interest.

Ongley J, in allowing the appeal, held that the inconvenience cause to the applicants was sufficient to make it desirable that ABL be directed to change their name. I quote below the relevant passages in the judgment (at pp. 610-611):

> The question remains whether, having regard to the extent of the confusion likely to arise by reason of members of the public being deceived in this way, it is undesirable to permit the defendant company to continue to be registered in its present name. The detriment to the plaintiff company, as I see it, is one of inconvenience only. On the evidence before me it has not been a trifling inconvenience. As I have already said I do not think that its customers would be diverted to the defendant company. Nor do I think it likely that it would lose business merely because of the inconvenience which its potential customers might be occasioned through being misled. Mistakes in identity would be corrected no doubt by both companies but because the defendant company is a much bigger organization and is a public company I would expect the plaintiff company to have to bear the greater burden in redirecting persons and communications to their correct destinations. It might well be involved in expense in promoting recognition of its separate identity or in taking other steps to minimize the confusion.
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> Avoidable confusion in the identity of two limited companies is obviously undesirable. Whether the discretion to order a change of name should be exercised will depend on the circumstances of each case and where the objectionable result of persons being misled by the resemblance of names is inconvenience rather than financial detriment to the business of one of the companies, the degree of inconvenience will be a primary factor to be considered. It is urged by the defendant company that in the circumstances of this case a requirement to change its name should be avoided because of the inconvenience and expense that would be cause to it by the change and the adverse effect it may have on its Stock Exchange listing and dealings in its shares. In reaching my decision I take those considerations into account but I do not find that they have been shown to be of sufficient weight to alter may view as to what should be done. I find that the registration of the defendant company under the name of *Abacus Holdings Ltd.* contravenes s. 31(1)(a) of the Companies Act and that the evidence before me favours the exercise of my discretion to order a change of name under s. 32(2).

In the *Airlines* case, the businesses carried on by the rival parties were similar and that case is therefore distinguishable from the case before me on this important factor. However, in the *Abacus* case, the businesses of AFL and ABL were different and the Court found that there was no likelihood that AFL's business would be diverted to ABL. The *Abacus* case is therefore not distinguishable on this basis. For this reason, Counsel for the plaintiffs has submitted that this Court should follow the law as applied by Ongley J and find for the plaintiffs on the facts.

In my view, it is important to appreciate the principle that was applied in the *Abacus* case. Although, Ongley J said that:

> Avoidable confusion in the identity of two limited companies is obviously undesirable

he went on to identify the nature of the undesirability in terms of:

> the degree of inconvenience ... (as) ...the primary factor.

Ongley J did not decide that any avoidable confusion will, *per se*, entitle the Registrar to say that the name is undesirable. He still has to consider whether the confusion will cause financial detriment or some other kind of consequence to the objector. On the facts, he found in favour of AFL, not because AFL would suffer a financial detriment, but because of the great inconvenience to AFL as AFL would be expected to "bear the greater burden in redirecting persons and communications to their correct destinations" and might well be involved in expense in promoting recognition of their separate identity or taking other steps to minimize the confusion. Ongley J did not think that the inconvenience and expense that would be caused by a change of name by ABL and the adverse effect it might have on ABL's Stock Exchange listing and dealing in its shares was sufficient to outweigh the degree of inconvenience cause to AFL. Ongley J's decision was therefore based primarily on a finding of fact as to the relative inconvenience to AFL and ABL.

In the case before me, the confusion in the names is not easily avoidable unlike in the case of two Singapore companies. In the case of a Singapore company, it has to reserve the name, whether for the purpose of incorporation or for a change of name. Any likely confusion that may arise is avoidable in such circumstances. In the case of a foreign company, it normally changes its name first in the country of its incorporation, and is only faced with an objection of confusion when it attempts to register itself in a foreign country or to change an existing name. In any case, where a foreign company, particularly a multi-national company, decides to change its name, the decision to do so is normally prompted by its business needs as a whole and is not primarily dictated by the needs of one of its many branches in the many countries in which it carries on business. In my view, the test applied by Ongley J must take these considerations into account in the case of foreign companies under a legal regime which gives priority to the location of multi-national companies in its territory.

With respect to the issue on inconvenience, what was and is expected to be the degree of inconvenience caused to the plaintiffs? On the evidence, nothing more than having received written and oral communications meant for the 2nd defendants, and, perhaps, having to continue to do so. In para. 18 of his affidavit, Peter Low said that this confusion of names:

> involves a substantial waste of manpower and to xerox each and every misdirected mail, telex, facsimile and other documents that were wrongly despatched or directed to the plaintiff, the plaintiffs have decided that they could not afford the luxury of photostating all these (communications) but only endeavoured to keep photostat samples of some of them to show the confusion.

Paragraph 18 is a revealing passage. It does not disclose that they had in fact re-directed any mis-directed communications to the 2nd defendants or that they are expected to do so. They are, in my view, quite right to adopt that attitude as they have no obligation to assist the 2nd defendants in any way. Therefore, the inconvenience to the plaintiffs was limited to receiving misdirected communications and copying them for the purpose of proving confusion. It would thus appear that but for the initial inconvenience of **receiving** mis-directed messages, the plaintiffs have suffered no other inconvenience except that which was necessarily caused by their own needs to preserve the evidence of confusion.

The Registrar has given four reasons for her decision the merits of which I now consider. The first, that "the original Drilex Systems, Inc was registered in USA on 15 May 1979 whereas the plaintiffs, Drilex Systems Pte. Ltd. was registered in Singapore on 4 October 1979" was factually wrong as the 2nd defendants adopted their name only in June 1987. However, the evidence adduced by the 2nd defendants shows that they had an earlier connection with the word "Drilex" than the plaintiffs as one of the English subsidiaries owns the trade mark "Drilex" which was first registered in France in 1974. Thus, there is no question of the 2nd defendants copying the name of the plaintiff in order to benefit from any goodwill of the 2nd defendants that may be associated with that word.

The second reason of the Registrar that the two companies are carrying on different businesses is supported by the evidence. There is no likelihood of any business of the plaintiffs being diverted to the 2nd defendants.

The third reason, that the presence of "Inc" in the 2nd defendants' name is sufficient to distinguish it from that of the plaintiffs, is disproved by the ample evidence of confusion in the identities of the plaintiffs and the 2nd defendants brought about by the two names.

The fourth reason, that it is undesirable that the 2nd defendants, being a foreign company, should be required to change their name as it would create confusion for themselves and/or their creditors, is partially justified, for the reasons I have given earlier in connection with the operations of multi-national companies. What the Registrar presumably means is that it is more inconvenient for the 2nd defendants to change their name just for the sake of doing business in or from Singapore than for the plaintiffs to be at the receiving end of mis-directed communications. It is really a question of the relative inconvenience to the parties concerned. That, in essence, would be how the Registrar would have put her justification if the *Abacus* case had been drawn to her attention when she made her decision.

In my view, these two reasons on which the Registrar's decision was based effectively answer the complaint of the plaintiffs. The first reason disables the plaintiff from relying on financial detriment as a ground of objection. The second reason of the Registrar is consistent with the test applied in the *Abacus* case. The plaintiffs have not discharged the burden of proving that the Registrar's balancing act was wrong. On the evidence, I hold that her decision was fully justified.

I have, in my previous judgment, said that the registration of a corporate name does not, *per se*, give the company any proprietary interest in the name but merely a statutory right to use it and to prevent other companies to use any identical or similar name, subject however to the provisions of the Act. The provision of s. 378 enable the Registrar in an appropriate case to override the rights of the company to monopolise the name. As registration of a name under the Companies Act is not concerned with the creation of a proprietary interest in a name, there is, of course, nothing to prevent the plaintiffs from establishing that they have such a proprietary interest. In the present proceedings, they are not concerned with establishing and do not have to establish the existence of such a proprietary interest as their case is based on their rights derived from the earlier registration of their corporate name. The dismissal of this appeal does not prevent them from pursuing any common law rights they may have in their name as a trade name against the 2nd defendants.

In the *Airlines* case, McGregor J held that the expression "undesirable" gave the Registrar under the New Zealand statute the widest discretion and that it would be undesirable to define the limits of that discretion. In the context of the Singapore statute which distinguishes between the conditions applicable to Singapore companies and to foreign companies, the

expression "undesirable" in s. 378 should similarly be construed to give the Registrar the widest discretion in the types of factors that are accepted as material to be considered. For example, there is no reason why she would not be entitled to take into account (although in the present case, she does not appear to have done so explicitly) economic factors in determining the relative inconvenience to the parties, in a case where "the objectionable result of persons being misled by the resemblance of names is inconvenience rather financial detriment to the business of one of the companies" (per Ongley J). There is no reason why, for example, the Registrar should not have been entitled to take into account the economic benefits that Singapore would obtain from the 2nd defendants' locating its office in Singapore for the sale and distribution of their products to the region, and to compare the loss of such benefits (if the 2nd defendants were prevented from locating in Singapore) with the benefits that the plaintiffs would bring to Singapore if they were given the monopoly of using the word "Drilex" as part of their name and business. An argument in very general terms was put by Counsel for the plaintiffs that if the Registrar were merely to favour the big multi-national companies in considering what is desirable or undesirable, it would infringe the constitutional protection of equality before the law or the equal protection of the law given by Article 12(1) of the Constitution of the Republic of Singapore. As this argument was made *en passant*, I do not propose to consider it as I do not think that constitutional questions should be decided without full arguments from Counsel representing all the parties.

For the above reasons, I dismiss this appeal with costs.

Also found at [1991] 1 CLJ 403